

Inventors: Yeaman and Shen  
Serial No.: 09/648,816  
Filed: August 25, 2000  
Page 4

### **REMARKS**

Claims 67-79 are pending and under examination in the above-identified application.

#### **Double Patenting Rejection**

The rejection of claims 69 and 75 under the judicially created doctrine of obviousness-type double patenting as allegedly obvious over claim 1 of copending U.S. Patent No. 6,743,769, is respectfully traversed. Applicants respectfully request that this rejection be held in abeyance until there is an indication of allowable subject matter at which time Applicants will file a Terminal Disclaimer if appropriate.

#### **Rejections under 35 U.S.C. § 102**

Applicants respectfully traverse the rejection of claims 67 and 68 under 35 U.S.C. § 102(b), as allegedly anticipated by United States Patent No. 5,409,898, to Darveau et al.

The peptides set forth in the '898 patent differ from the claimed antimicrobial peptides by having non-identical natural amino acid residues at several positions. A synthetic analog of an amino acid is a non-natural amino acid. The Office argues that the term "synthetic analogs" does not mean non-natural amino acids. Applicants respectfully disagree. Synthetic means "not of natural origin" or "manmade." See Attachment A, excerpt from Webster's II New College Dictionary, Houghton Mifflin Co., 1999 ed. Similarly, "analog" means a "structural derivative of a parent compound." See Attachment B, excerpt from Webster's II New College Dictionary, Houghton Mifflin Co., 1999 ed. The non-identical natural amino acid residues of Darveau et al. are (1) of natural origin and (2) they are not structural derivatives the amino acid residues of the claimed natural amino acid residues.

A natural peptide having non-identical natural amino acid residues at several positions compared to the claimed antimicrobial peptide does not represent a an antimicrobial peptide of claims 67-69 and 75. Accordingly, removal of the rejection of claims 67 and 68 under 35 U.S.C.

Inventors: Yeaman and Shen  
Serial No.: 09/648,816  
Filed: August 25, 2000  
Page 5

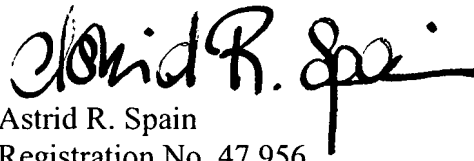
§ 102(b), as allegedly anticipated by United States Patent No. 5,409,898, to Darveau et al. respectfully is requested.

### CONCLUSION

In light of the Remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. Should the Examiner have any questions, he/she is invited to call the undersigned attorney.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Astrid R. Spain  
Registration No. 47,956

4370 La Jolla Village Drive, Suite 700  
San Diego, CA 92122  
Phone: 858.535.9001 ARS:cjh  
Facsimile: 858.597.1585  
**Date: April 13, 2007**

**Please recognize our Customer No. 41552  
as our correspondence address.**